
Remarks

This paper is intended as a full, complete and *bonafide* response to the outstanding Final Office Action dated February 13, 2004.

First and foremost, the Office Action of February 13, 2004 does not establish a *prima facie* rejection of obviousness (35 U.S.C. § 103(a)) and fails to comply with Graham v. John Deere Co. of Kansas City, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

In the last Amendment, Currently Amended Claim 1 recited in the last limitation:

the data communication between the user interface
and the ECB means is effected through the internal
browser.

The letter dated November 19, 2003 attached to the latter-noted Amendment, as well as arguments presented by the undersigned beginning at the bottom of page 4 of the last Amendment, emphasized "that the main characteristic of the invention resides in the fact that the 'User interface of the ECB is in close connection with the internal web browser, which yields the information from the internal web server about the therapy'." In accordance with Graham, supra, the undersigned has clearly defined by the last limitation of claim 1 the subject matter of the invention which, in the opinion of the undersigned, the inventors and all concerned, is directed to unobvious subject matter of the invention *as a whole*.

At page 2, paragraph 3 of the Final Office Action, the Examiner stated: "Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,551,266 to Davis, in view of US Pub. 2003/0154108 to Fletcher-Hayes et al."

The Examiner described the prior art including the statement that using the Internet as a communication tool is an obvious solution to communication problems. The latter point is conceded because the Internet does provide "a common language that various machines on a network can use to communicate with one another, as taught by Fletcher-Hayes see paragraphs 0204-0206."

The undersigned also appreciates the Examiner stating that the Fletcher-Hayes communication system can be used in an extracorporeal blood treatment system because the latter "specifically discloses a web interface that allows communication between a computer/database system and various other computer systems." Comparing the latter-quoted language with the last limitation of claim 1, where Indeed does the Examiner find a basis for the obviousness rejection? There is neither a teaching nor a suggestion nor motivation in the Fletcher-Hayes et al. disclosure which renders obvious the last clause of claim 1 in the totality of the combination recited in the claims.

In the Advisory Action of "05/10/2004," the "Continuation Sheet" thereof, the Examiner alleged "appropriate motivational statements" were provided on page 3 of the "Office Action" of February 13, 2004. As the undersigned stated at page 3, second full paragraph of the REQUEST FOR CLARIFICATION:

Once the Examiner has combined the prior art, as suggested, the obvious combination thereof is that of providing 'the extracorporeal treatment device and computerized data management system disclosed by Davis with the internal [sic] communications software disclosed by Fletcher-Hayes in order to provide a means of communication that can be decoded by various machines on the network.' The latter does not render obvious the **specific** last limitation of claim 1!

Interestingly enough, nowhere in the Final Office Action does the Examiner even mention the words "internal browser" appearing in claim 1 and certainly does not suggest that the prior art renders obvious "the data communication between the user interface and the ECB means is effected through the internal browser." If the latter-quoted limitation finds motivation in the prior art, precisely where at page 3 of the Final Office Action can the undersigned find such "appropriate motivational statements"?

Where at page 3 is there found the phrase "internal browser"?

Interestingly enough, the Examiner states "Fletcher-Hayes' extracorporeal blood treatment system specifically discloses a web interface that allows communication between a computer/database system and various other computer systems." Is the latter-quoted statement one of the alleged "appropriate motivational statements" mentioned by the Examiner? If so, where in the prior art are such "various other computer systems" correlated to an "internal browser" in the specific structural combination defined by the last limitation of claim 1?

The Examiner's conclusion ("Therefore, it would have been obvious to one of ordinary skill in the art.... with the internet communications software disclosed by Fletcher-Hayes... that can be decoded by various machines on the network, as taught by Hayes.") is absolutely and unequivocally silent with respect to the specific limitation appearing in the last clause of claim 1!

Based upon the foregoing, the rejection of claims 1 through 7 at page 2, paragraph 3 of the outstanding Office Action is completely erroneous, and the withdrawal thereof is herewith respectfully requested.

Applicants have not been provide a *bonafide prima facie* case of obviousness by the Examiner either in the Final Office Action or the Advisory Action of May 10, 2004. Accordingly, the undersigned still finds it impossible to provide guidance to Applicants and Applicants' foreign counsel with respect to the future prosecution of the application, other than recommending an appeal to the Board of Appeal and Patent Interferences. Quite obviously, an appeal is in order but absent a *prima facie* case of obviousness, the only arguments that could be presented before the Board are those earlier presented and represented herein. Having been essentially ignored thus far by the Examiner, they most certainly will either be ignored in the future or further explanation/prior art might be provided. Having repeated the rejection, made the same FINAL, and issued the Advisory Action, the Examiner undoubtedly considers her position to be correct, but certainly the record is silent concerning the last limitation of claim 1 and the manner in which the same is allegedly rendered obvious. With due respect, absent proper consideration of the scope and content of the prior art and the claimed subject matter *as a whole* pursuant to the Graham factors/conditions, the withdrawal of the rejection of record followed by the formal allowance of all of the claims is believed proper and is herewith respectfully requested.

Very respectfully,

DILLER, RAMIK & WIGHT

By:


Vincent L. Ramik, Reg. 20,663

7345 McWhorter Place; Suite 101
Annandale, Virginia 22003
(703) 642-5705 - telephone
(703) 642-2117 - fax